



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 17 OF 2012

IN THE MATTER OF THE ESTATE OF MUCHAI MUNYUI (DECEASED)

AND

SIMON KINYUA GITAKA.....PETITIONER

VERSUS

PETER KARANI GITAKA.....PROTESTOR

JUDGMENT

1. This judgment is in respect to the estate of the late **MUCHAI MUNYUI** (deceased) who died on 18th December, 2002 domiciled in Kirinyaga County. He died and left the following dependants surviving him;

- (i) Esther Muthoni Muchai (now deceased)
- (ii) Simon Kinyua Gitaka
- (iii) Peter Karani Gitaka
- (iv) Francis Mindo Gitaka
- (v) Joseph Githae Gitaka
- (vi) Jane Wangithi Gitaka
- (vii) Juliana Wanjiku Gitaka; and
- (viii) Penina Wambura Gitaka

2. Simon Kinyua Gitaka, one of the children of the deceased petitioned for letters of administration of the estate of his named deceased father and was granted letters by this court on 15th December, 2011 and thus became appointed administrator of the estate of the deceased herein. On 16th May, 2012 he took out summons for confirmation of grant and listed the following assets as comprising the estate:

- (i) Kabare/Gachigi/39 measuring approximately 3.04 ha
- (ii) A $\frac{1}{4}$ share in INOI/Kerugoya/667

- (iii) Plot No. 28 at Kiangwenyi
- (iv) Plot No. 21 at Kiangwenyi
- (v) Plot No. 21 at Kiangwenyi (Lock-up Market Shelter).

In his proposal on the mode of distribution he proposed to have the estate distributed as follows:

- (i) Kabare/Gachigi/39 – To be shared equally among the 7 children of the deceased.
- (ii) 2 small rooms at Kiangwenyi and Inoi/Kerugoya/667 to go to himself (Simon Kinyua Gitaka).
- (iii) Lock up shop (Market Shelter) at Kiangwenyi market to Peter Karani Gitaka.
- (iv) One big room in Plot 28 to go to Francis Mindo Gitaka.
- (v) One big room in Plot 21 to go to Julian Wanjiku Gitaka.
- (vi) 1 small room and a share in the interest in 4 big rooms in Plot No. 28.
- (vii) 1 small room in Plot No. 21 and interests in 2 other rooms (bar) to go to Jane Wangithi Gitaka.
- (viii) 2 small rooms in Plot No. 21 Kiangwenyi to go to Penina Wambura Gitaka.

3. Peter Karani Gitaka was dissatisfied with the mode of distribution suggested by the administrator and filed a protest herein and gave the following suggested mode of distribution as his preferred choice;

- (a) 2 small rooms in Plot No. 28 Kiangwenyi and Lock up (Market Shelter) to go to Simon Kinyua Gitaka.
- (b) Share in Plot INOI/Kerugoya/667 to go to him (Peter Karani Gitaka).
- (c) 1 big room in Plot 28 to go to Francis Mindo Gitaka.
- (d) 1 big room in Plot 21 Kiangwenyi to go to Julian Wanjiku Gitaka.
- (e) 1 small room and shared interest in 4 big rooms in Plot 28 Kiangwenyi to go to Joseph Githae Gitaka.
- (f) 1 small room in Plot No. 21 at Kiangwenyi and interest in 2 small rooms to Jane Wangithi Gitaka.
- (g) 2 small rooms at Plot No. 21 Kiangwenyi to go to Penina Wambura Gitaka.

4. At the hearing of the protest, it transpired that the protestor was protesting more on the assets he claimed were left out and faulted the administrator for having ulterior motives in not including all the assets that belonged to the deceased in the list of assets for distribution. This Court directed that an inventory and discovery of all the assets forming the estate of the deceased be filed and the administrator herein came up with the following additional assets comprising the estate of the deceased herein:

- (i) 7000 shares at Cooperative Bank.
- (ii) 70,240/- share at Bingwa Sacco.
- (iii) 14.6 shares at Gichugu Housing Cooperative Society.

(iv) 447 shares at Kimunye Tea Estate and a further 20,998 which is now registered in the name of Esther Muthoni Muchai (deceased).

(v) 2 shares at Fortune Sacco.

5. Both the administrator and the protestor agreed that the shares in various companies as listed above should be distributed equally among the 7 children to the deceased. The only point of controversy was the proposed mode of distribution of the assets comprised in Plots No. 21 and 28 Kiangwenyi. The administrator supported by the other siblings justified the mode of distribution suggested saying that they had decided to use balloting to determine who was to get what and that the protestor had declined to take part in the balloting forcing them to look for a representative whom they found in one of their uncles to ballot on behalf of the protestor and that according to them that led to the protestor getting a lock up shop (Market shelter) at Plot No. 26 Kiangwenyi. The protestor on his part accused his siblings for conspiring to give him a raw deal and asked this court to have the assets distributed equally and fairly to all the beneficiaries.

6. This cause presents no major cause of disagreements. The parties are all in agreement that the assets of the deceased, herein should be distributed fairly and equally among the seven surviving children. This is what the law provides. **Section 38 of Law of Succession Act** provides that where an intestate person (deceased person) has left surviving children and no spouse, the net intestate estate (assets left behind) should be divided equally among the surviving children. The method agreed upon by the administrator and his other siblings to determine how parts of the estate should be distributed that is through balloting was not only archaic in light of the new dispensation of justice but unfair as well. It has no place in the modern society where there is rule of law and legal mechanism that provides how the intestate estate of a deceased person should be distributed. To this extent, this Court agrees with the protestor that the method exposed him to prejudice as it appears on the face of it to be too much of a coincidence that the person who refused to take part ended up getting the least valuable asset in the assets distributed.

7. In the premises this Court directs that the following assets comprising the estate shall be divided equally among the following children:

- (i) Simon Kinyua Gitaka
- (ii) Peter Karani Gitaka
- (iii) Francis Mindo Gitaka
- (iv) Joseph Githae Gitaka
- (v) Jane Wangithi Gitaka
- (vi) Juliana Wanjiku Gitaka; and
- (vii) Penina Wambura Gitaka

The following assets listed by the Petitioner/administrator shall be divided equally among the 7 above named children;

- (i) Kabare/Gichigi/39
- (ii) $\frac{1}{5}$ share in developed plot No. 28 Kiangwenyi.
- (iii) $\frac{1}{3}$ share in developed plot No. 21 at Kiangwenyi.
- (iv) $\frac{1}{4}$ share in Inoi/Kerugoya/667.

(v) Market stall (Lock up shop) at Plot 26 Kiangwenyi.

(vi) 70,240 shares at Bingwa Sacco.

(vii) 447 shares at Kimunye.

(viii) 2 shares at Fortune Sacco

For ease of distribution this Court directs that a registered valuer be engaged to value the assets comprised in plots where the deceased owned shares (Plot 21, Plot 26, Plot 28 and Inoi/Kerugoya/667) in order to assist the beneficiaries in distribution of the said assets equally and equitably as much as possible.

This Court was told that further 20,998 shares at Kimunye Tea Factory reverted to the widow Esther Muthoni Muchai (now deceased). The same shall therefore be subject to a petition for letters of administration in respect to the estate of Esther Muthoni Muchai. The parties herein are advised to take out the letters of administration accordingly to avoid further feuds in the family. For now I shall make no order as to costs. The costs of the surveyor to carry out subdivisions of the said land parcels and valuer to be engaged as directed shall be met through equal contributions of all the seven children and parties herein are given liberty to apply.

Dated and delivered at Kerugoya this 12th day of October, 2016.

R. K. LIMO

JUDGE

12.10.2016

Before Hon. Justice R. K. Limo J.,

Court Assistant Naomi Murage

Simon Kinyua present

Peter Karani present

COURT: Judgment signed, dated and delivered in open court in the presence of both the petitioner in person and the protestor.

R. K. LIMO

JUDGE

12.10.2016